

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Kulig	Team: Team # 5	CCRB Case #: 201309377	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/01/2013 4:20 AM	Location of Incident: § 87(2)(b)	Precinct: 60	18 Mo. SOL 4/1/2015	EO SOL 4/1/2015	
Date/Time CV Reported Tue, 10/01/2013 4:36 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/07/2013 1:27 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Oneill	18511	943630	060 PCT
2. POM Michael Kovalik	25801	948368	060 PCT
3. Officers			060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Moyibi Thomas	05299	921810	060 PCT
2. POM Keith Santiago	29968	951207	060 PCT
3. POM Argimiro Goicoechea	14280	923892	060 PCT
4. POM Anthony Avosso	03190	946758	060 PCT
5. POF Aida Acevedo	01701	927826	060 PCT
6. POM Cluver Cotrina	26584	936398	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Oneill	Abuse: PO Patrick Oneill entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.POM Michael Kovalik	Abuse: PO Michael Kovalik entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.POM Patrick Oneill	Abuse: PO Patrick Oneill damaged § 87(2)(b) s and § 87(2)(b) s property.	§ 87(2)(b)
D.POM Patrick Oneill	Force: PO Patrick Oneill used physical force against § 87(2)(b)	§ 87(2)(b)
E. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint over the telephone with IAB on October 1, 2013, generating original log number 2013-41892 (encl. 4A-4B). It was received by the CCRB on October 7, 2013.

At approximately 4:20 a.m. on October 1, 2013, officers responded to § 87(2)(b) § 87(2)(b) in Brooklyn due to multiple 911 calls concerning a landlord-tenant dispute. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Patrick O’Neill entered and searched** § 87(2)(b) § 87(2)(b) **in Brooklyn.**
- **Allegation B – Abuse of Authority: PO Michael Kovalik entered and searched** § 87(2)(b) § 87(2)(b) **in Brooklyn.** § 87(2)(g)
- **Allegation C – Abuse of Authority: PO Patrick O’Neill damaged** § 87(2)(b) **s and** § 87(2)(b) **s property.** § 87(2)(g)
- **Allegation D – Physical Force: PO Patrick O’Neill used physical force against** § 87(2)(b) § 87(2)(g)
- **Allegation E – Physical Force: Officers used physical force against** § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) *a 5’3” tall, 125 lb. white woman with red hair and blue eyes, was* § 87(2)(b) *at the time of the incident.* § 87(2)(b) *She is the wife of* § 87(2)(b)

911 Call/IAB Statement

§ 87(2)(b) provided statements over the telephone to 911 and to IAB on October 1, 2013 (encl. 6A). § 87(2)(g)

CCRB Statement

§ 87(2)(b) provided statements to the CCRB over the telephone on October 16, 2013 (encl. 6B) and in person on October 21, 2013 (encl. 6C-6E). § 87(2)(g)

Prior to the incident, § 87(2)(b) had allowed an acquaintance, § 87(2)(b) to store his belongings in their apartment, located at § 87(2)(b) § 87(2)(b) in Brooklyn. He told § 87(2)(b)

§ 87(2)(b) that it would only be a couple of days. When § 87(2)(b) asked him to remove his belongings after more than a week, he refused and stated that he needed to work. They waited for four days. Eventually, § 87(2)(b) stated that he would pick up his belongings on October 1, 2013 at midnight.

§ 87(2)(b) arrived at § 87(2)(b) § 87(2)(b) on October 1, 2013, at approximately 4 a.m. He came with two other individuals, identified by the investigation as § 87(2)(b) and § 87(2)(b). § 87(2)(b) attempted to enter the home. § 87(2)(b) concerned that someone may be trying to break in, called the police. Eventually, § 87(2)(b) called § 87(2)(b)'s phone. When § 87(2)(b) saw the call, she realized he was at the door, and she let him into the front yard.

§ 87(2)(b) and his friends placed his belongings in a van. § 87(2)(b) said that some of his belongings, including guitars, were missing. § 87(2)(b) told him that it was late at night and that he could come the next day to pick up the remainder of his belongings. § 87(2)(b) then called the police and accused § 87(2)(b) of stealing his belongings.

Approximately five or ten minutes later, six or seven police officers arrived in two marked police cars. § 87(2)(b) was only able to describe three of these officers. One, who she describe as a 6' tall, 40-year-old white male with an athletic build, dark brown or black hair, and a mustache, was identified by the investigation as PO Patrick O'Neill. The second, who she described as a 5'6" tall, 35-year-old Hispanic female with dark hair and dark eyes, was identified by the investigation as PO Aida Acevedo. The third, who she described as a 6' tall, 32 to 35-year-old white male officer with light brown hair and blue or green eyes, remains unidentified.

When they arrived on scene, they first spoke with § 87(2)(b) and his friends on the sidewalk in front of their apartment. § 87(2)(b) believed that they accused § 87(2)(b) of stealing § 87(2)(b)'s belongings. She only heard the words "scam," "stuff," and "money."

§ 87(2)(b) went to the door of the fence outside their apartment. The door was closed, but § 87(2)(b) could see through it. He spoke to the officers and said, "If you have any questions, you can ask." They ignored him and began breaking through the front gate. At this time, § 87(2)(b) and § 87(2)(b) were scared, so they went inside the house and closed the door. They put one lock on the door.

Approximately four officers, two of whom were identified by the investigation as PO O'Neill and PO Kovalik, broke open the door to the house and ran inside. § 87(2)(b) believed they used "special equipment" because there was a circular dent on the door after the incident. The officers immediately grabbed § 87(2)(b) without saying anything. § 87(2)(b) did not specify which officer grabbed him. They twisted his arms behind his back and pushed him onto the four concrete stairs leading into the apartment by the back of his neck. § 87(2)(b) landed face down on the stairs. § 87(2)(b) yelled, "This is our apartment. We live here. We have a lease. We have bills." She was standing in the living room, which is directly behind the front door.

The officers who entered the apartment began beating up § 87(2)(b). § 87(2)(b) was kicked at least five or six times on the right and left sides of his chest. § 87(2)(b) stated that PO O'Neill was the officer who primarily used force against him. The other officers held § 87(2)(b) but § 87(2)(b) thought they may have been kicking him too. During her IAB statement § 87(2)(b) stated that § 87(2)(b) was "hit" in his stomach and chest by officers. In her telephone statement to the CCRB, she stated that the officers hit him on the back with their fists. She did not repeat this during her CCRB interview.

§ 87(2)(b) attempted to hold his body up to prevent his eyes and nose from making contact with the stairs. The officers held his hands behind his back. § 87(2)(b) was then

handcuffed. He did not resist. § 87(2)(b) did not see which officer handcuffed him because their backs were facing her. § 87(2)(b) heard an officer yell the word “fuck,” but she did not hear the specific statement. She did not indicate whether this word was directed at anyone in particular. § 87(2)(b) was placed in a police vehicle and transported to the stationhouse. He did not have shoes on his feet, and his face was bleeding.

PO Acevedo stood outside the home during the incident and did not enter. § 87(2)(b) and his friends were outside. No one else witnessed the incident. At some point, the unidentified white male officer, noted earlier, entered the apartment and started walking back and forth. § 87(2)(b) told him to leave.

§ 87(2)(b) was unable to close the door to her home because the lock was broken from the officers entering. § 87(2)(b) took photographs of the broken door. She called 911 and explained what happened. She then called the precinct and told them that § 87(2)(b) needed medical attention. Around § 87(2)(b) § 87(2)(b) visited § 87(2)(b) at § 87(2)(b). At this time, she saw that his knees were bleeding. § 87(2)(b) was later taken to § 87(2)(b) where he was diagnosed with a broken rib.

Photographs (encl. 6J-6P)

§ 87(2)(b) provided photographs of § 87(2)(b)'s injuries during her CCRB interview. The photographs were taken at § 87(2)(b) on § 87(2)(b). The photographs show scrapes to § 87(2)(b)'s knees, as well as bruises on the inside of his upper right and left arms.

§ 87(2)(b) also provided photographs of § 87(2)(b) which were taken on October 1, 2013 after the incident. The photographs show damage to the lock on her front door, allegedly caused by the officers' entry. There is also a photograph of the fence outside of the residence. In the photograph, the bamboo on the fence appears to have been pulled back.

Victim: § 87(2)(b)

- § 87(2)(b) a 5'7" tall, 240 lb. white man with light brown hair and blue eyes, was § 87(2)(b) years old at the time of the incident. § 87(2)(b)

911 Call

§ 87(2)(b) provided telephone statements to 911 on October 1, 2013 (encl. 6A). § 87(2)(b)

Pre-Hospital Care Report Statement

§ 87(2)(b) provided statements to EMTs § 87(2)(b) and § 87(2)(b) on October 1, 2013 (encl. 25A-25B). § 87(2)(b) stated that he had a history of seizures. He denied having any seizures that day and had no other complaints.

Statement

§ 87(2)(b) provided statements at § 87(2)(b) on § 87(2)(b) (encl. 26A-27QQ). At § 87(2)(b) § 87(2)(b) was brought to the hospital and stated that he was going through alcohol withdrawal. He said that he drank “two vodkas” 20 minutes before but that he was afraid he would soon be withdrawing. He claimed to have minor tremors. He stated that he called 911 earlier in the morning when his house was broken into and that NYPD came and arrested him on personal charges. He complained of an injury to the face and both knees. He claimed to have received the injuries on his knees when his knees rubbed against the floor during his arrest. § 87(2)(b) returned to the hospital at § 87(2)(b) complaining that he had a seizure

in prison and was withdrawing. He complained of weakness and a headache. He later denied having a seizure.

§ 87(2)(b) Statement

§ 87(2)(b) provided statements at § 87(2)(b) on § 87(2)(b) (encl. 28A-28QQ). He stated, “I was punched by someone two days ago who stole my wallet. He said that he went to § 87(2)(b) before going there and that he was in the 60th Precinct stationhouse for two days and was assaulted by cops. He later stated that police officers struck him with their fists all over his body. At some point, he also stated that his injuries occurred when he was kicked, pushed, and thrown down. He complained of pain in the area of his right rib. He also complained of pain to his arms, knees, and back, and blood in his urine. He stated that his symptoms started around 5:55 a.m. on October 1, 2013.

CCRB Statement

§ 87(2)(b) provided statements to the CCRB over the telephone on October 11, 2013 (encl. 7A) and in person at the CCRB on October 21, 2013 (encl. 7B-7D). § 87(2)(g)

§ 87(2)(b) charged § 87(2)(b) \$500 to store his belongings in an empty room in the apartment. [During his phone statement, he stated that he charged § 87(2)(b) \$10 a day.] They agreed that § 87(2)(b) would give § 87(2)(b) five days’ notice to move his belongings once they found someone to rent the room. When § 87(2)(b) and § 87(2)(b) found someone to rent the room, they notified § 87(2)(b) that he had to move his belongings, which had been in the apartment for approximately two weeks. § 87(2)(b) said he would be at the apartment around 11 p.m. on September 30, 2013. He did not come until 4 a.m. the next day.

An unspecified number of officers arrived to the scene in two marked police vehicles. He could only describe one of these officers, a 5’10”-5’11” tall, 40-year-old male officer with black hair, a mustache, and a large build, who was identified by the investigation as PO Patrick O’Neill. § 87(2)(b) stated that PO O’Neill appeared Hispanic, but at some point he told § 87(2)(b) that he was not Hispanic.

The officers went to the door of the metal and bamboo fence outside § 87(2)(b) s apartment, which has a sign stating something along the lines of, “Trespassing not allowed. If you have any questions, call my number.” § 87(2)(b) spoke through the door with PO O’Neill. § 87(2)(b) stood approximately three or four feet away and asked, “What do you want from me?” He attempted to explain the situation and told the officers to remove § 87(2)(b) from his property. PO O’Neill asked him to open the gate. § 87(2)(b) initially stated that PO O’Neill asked him several times but later stated that he asked only once. § 87(2)(b) told the officers he would not open the door because it was his property. He then asked, “What’s going on? Why you need to open the door? You want to ask questions? I’ll answer you.” At some point, § 87(2)(b) moved into the doorway of his apartment, which is approximately 10 or 15 feet from the front gate. PO O’Neill then began tearing off pieces of the metal and bamboo fence to enter. § 87(2)(b) closed the door to his apartment.

Officers, who § 87(2)(b) could not describe, entered his apartment and pushed him on the floor. § 87(2)(b) could not identify who entered his apartment or how many entered, but the investigation determined that two of the officers were PO O’Neill and PO Kovalik. § 87(2)(b) yelled, § 87(2)(b) and told his wife to take his watch. The officers then began kicking § 87(2)(b) in his lower back, his stomach, his buttocks, and the left side of his neck. § 87(2)(b) did not know how many times he was kicked. He stated that he lost consciousness for a

few seconds. While he was being kicked, he was on his hands and knees. The officers attempted to push his face into the stairs. § 87(2)(b) tried to protect his face, but he did not say how he did this. He held his hands on the ground the whole time and did not move them around. He could not specify which officers used force against him.

§ 87(2)(b) was eventually handcuffed inside the apartment and dragged out on his stomach. He could not identify the officer who did this. He was placed in a police vehicle. At this time, he saw more police officers outside, but he did not recall how many. § 87(2)(b) was bleeding and was still in his pajamas. He was pushed into the police car and transported to the 60th Precinct stationhouse by PO O'Neill and another officer, who was identified by the investigation as PO Kovalik.

When he arrived at the stationhouse, § 87(2)(b) told the officers that he wanted to go to the hospital. He was transported to § 87(2)(b). His legs were shackled to the bed, causing them to bleed. § 87(2)(b) came and gave § 87(2)(b) socks and shoes. His knees were bandaged, and he went back to the stationhouse. He spent the night there and later returned to § 87(2)(b) to get a CAT scan for his injuries. § 87(2)(b) had two broken ribs from the incident. He was bleeding from his head, had bruises and lumps on his left arm, bruises on his upper right arms, scrapes on his knees, and blood in his urine. Two locks on § 87(2)(b)'s door were broken.

Witness: § 87(2)(b)

- § 87(2)(b) a white man, was § 87(2)(b) old at the time of the incident.

Complaint Report/Arrest Report (encl. 11C-11H)

§ 87(2)(b) provided a statement to PO O'Neill on October 1, 2013. § 87(2)(g)

CCRB Statement

§ 87(2)(b) provided a telephone statement in Russian to the CCRB on January 28, 2014 (encl. 8A).

At approximately 4:20 a.m. on October 1, 2013, § 87(2)(b) went to § 87(2)(b) with § 87(2)(b) and § 87(2)(b) to retrieve his belongings. [According to the complaint report, he had paid \$500 for a month's rent at the location.] § 87(2)(b) placed some of his belongings in the front yard. He refused to surrender some of his belongings, including his notebook. [According to the complaint report, § 87(2)(b) also smashed his guitars, valued at \$1000.] § 87(2)(b) called the police. Two marked police cars from the 60th Precinct arrived on scene. When they arrived, § 87(2)(b) gave § 87(2)(b) his notebook.

The officers asked § 87(2)(b) to open the apartment door. He refused and began cursing at the officers. He attempted to close the door, but an officer who he described as a 5'11" tall, 35-year-old white male with short dark hair and a stocky build, identified by the investigation as PO O'Neill, prevented him from closing it. He pulled § 87(2)(b) out of the house by his arm. § 87(2)(b) did not recall which arm. § 87(2)(b) pushed PO O'Neill away, and the two of them wrestled. § 87(2)(b) could not describe how they were wrestling. He was not sure if PO O'Neill entered the apartment because he was watching the incident through an opening in the fence.

§ 87(2)(b) was handcuffed on his knees by PO O'Neill. § 87(2)(b) believed § 87(2)(b) was handcuffed on the sidewalk, but he was not sure. § 87(2)(b) and § 87(2)(b) stood by their van, which was parked near the house. Besides PO O'Neill, § 87(2)(b) also remembered a 5'6" tall black or Hispanic female officer in her 40s with dark hair and an average

build, who was identified by the investigation as PO Acevedo.

§ 87(2)(g)

Witness: § 87(2)(b)

- § 87(2)(b) a white man, was § 87(2)(b) at the time of the incident.

911 Call

§ 87(2)(b) called 911 at approximately 4:07 a.m. on October 1, 2013 (encl. 9A). § 87(2)(g)

CCRB Statement

§ 87(2)(b) provided a telephone statement on January 28, 2014 (encl. 9B). § 87(2)(g)

When § 87(2)(b) arrived at § 87(2)(b) § 87(2)(b)'s demeanor was normal. Over the next half an hour, he became very aggressive. § 87(2)(b) believed that § 87(2)(b) had been consuming alcohol in that time. § 87(2)(b) spoke to them from his doorway. At one point, he started calling them names and threatened to find § 87(2)(b) and kill him. § 87(2)(b) then called the police.

§ 87(2)(b) could not see what happened after § 87(2)(b) attempted to close the door to his house. § 87(2)(b) was standing outside of the fence, which surrounded the yard. The fence was approximately 10 feet from the front door of the house. § 87(2)(b) did not know if the officers entered the apartment.

§ 87(2)(b) did not see any officers punch or beat § 87(2)(b) while they attempted to handcuff him. He believed that the officers placed him on the ground and handcuffed him there. He did not remember where § 87(2)(b) was when he was handcuffed.

§ 87(2)(b) missed his first scheduled CCRB interview on February 4, 2014. On March 20, 2014, he stated that he could not come to the CCRB for an interview because he was traveling and that he would not be interested in being interviewed once he returned.

Witness: § 87(2)(b)

- § 87(2)(b) a white man, was § 87(2)(b) old at the time of the incident.

CCRB Statement

§ 87(2)(b) provided a telephone statement in Russian to Inv. Sazonov on January 29, 2014 (encl. 10A). § 87(2)(g)

While the officers were on scene, § 87(2)(b) stood next to a van, parked across the street from the location. He observed the officers enter the front gate, which was already open. § 87(2)(b) stood behind the door to the house, which was cracked open. The officers asked § 87(2)(b) to come outside. § 87(2)(b) was yelling obscenities at everyone, including the officers. § 87(2)(b) could not recall any specific statements that he made. § 87(2)(b) appeared intoxicated, based on the fact that his speech was slurred and he was unsteady on his feet.

From where § 87(2)(b) was positioned, he saw the officers' backs. The officers spoke to § 87(2)(b) for approximately five to seven minutes. The next thing § 87(2)(b) knew, § 87(2)(b) was out of the house and was being handcuffed in his yard. § 87(2)(b) could not describe specifically how § 87(2)(b) pushed an officer away or how he wrestled with the officers. Despite the area being well-lit, he had difficulty seeing the incident because there was a

tall fence surrounding the yard. § 87(2)(b) did not see the officers enter § 87(2)(b)'s house. He did not know how § 87(2)(b) was brought to the street after he was handcuffed.

§ 87(2)(g)

NYPD Statements:

Subject Officer: PO PATRICK O'NEILL

- *PO O'Neill, a 6'2" tall, 275 lb. white man with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On the day of the incident, he worked between 11:15 p.m. and 7:50 a.m. He was assigned to 60th Precinct patrol sectors A and B with PO Kovalik. He was dressed in uniform and worked in marked vehicle number 3916.*

Memo Book (encl. 11A-11B)

At 4:20 a.m., PO O'Neill responded to a burglary in progress at § 87(2)(b) § 87(2)(b). At 4:49 a.m., § 87(2)(b) was arrested. He was charged with § 87(2)(b) § 87(2)(b). At 5:30 a.m., PO O'Neill went to § 87(2)(b) for a line-of-duty injury. At 8 a.m., he arrived at the 60th Precinct and was discharged.

Complaint Report/Arrest Report (encl. 11C-11H)

During PO O'Neill's investigation, § 87(2)(b) came outside and began yelling and cursing. § 87(2)(b) identified him at this time. Upon approaching § 87(2)(b) he ran inside. PO O'Neill followed him. While attempting to place him under arrest, § 87(2)(b) flailed his arms and attempted to prevent PO O'Neill from effecting an arrest. The total value of the stolen property was valued at \$2,035.

CCRB Statement

PO O'Neill was interviewed at the CCRB on December 17, 2013 (encl. 11I-11K).

On October 1, 2013, at approximately 4:20 a.m., PO O'Neill and PO Kovalik responded to a call for a burglary in progress with three males in front of the location at § 87(2)(b) in Brooklyn. PO O'Neill indicated that other officers responded at some point, but he did not know who responded and did not indicate when they arrived.

When PO O'Neill arrived on scene, he saw three males outside of the residence, identified by the investigation as § 87(2)(b) and § 87(2)(b). One of them, identified by the investigation as § 87(2)(b) explained that he was renting a room and was told to move all of his property out, two weeks prior to the end of their rental agreement, to prepare for the arrival of a new tenant. When § 87(2)(b) came home, he found all of his property outside of the apartment and he was missing various items. He had also received threatening text messages in Russian from the landlord stating that he broke several items.

§ 87(2)(b) then came out of the house, exited the chain-linked fence, which is about three feet high with a six-foot bamboo extension and is 15 feet away from the front door, and stood on the sidewalk. One of the three males identified him as the landlord. § 87(2)(b) was cursing and yelling in English and Russian. His slurred speech indicated to PO O'Neill that he was intoxicated. When PO O'Neill approached § 87(2)(b) and attempted to get information from him, he continued to be belligerent. § 87(2)(b) went back into the gate and closed it. PO O'Neill told him to stop and come back numerous times. § 87(2)(b) ignored his orders and

remained inside the gate.

PO O'Neill broke the bamboo on the fence to open the gate. He walked through the gate and approached § 87(2)(b). PO O'Neill was not sure if any other officers entered the gated area. § 87(2)(b) began to run back into the apartment and PO O'Neill ordered him to stop. § 87(2)(b) entered the apartment and closed the door behind him. PO O'Neill attempted to open the door but it was locked. PO O'Neill ordered him to open the door. He could hear § 87(2)(b) yelling more obscenities inside. PO O'Neill broke the lock and forced the door open with his shoulder in order to arrest § 87(2)(b) for unlawfully evicting § 87(2)(b) and stealing and damaging his property. He did not use any tools to open the door and did not observe any physical damage to the door before or after forcing it open. He stated that he could have damaged the door when he forced it open.

Upon entering the front door, PO O'Neill saw § 87(2)(b) in the living room and told him twice to turn around and put his hands behind his back. § 87(2)(b) continued to yell and curse and did not comply. PO O'Neill reached for § 87(2)(b)'s left arm, and § 87(2)(b) pulled his arm back and moved his shoulders back and forth. A struggle ensued in which PO O'Neill was attempting to get § 87(2)(b)'s arms behind his back. § 87(2)(b) tensed and flailed his arms, holding them in front of him, and attempted to move away from PO § 87(2)(b). PO O'Neill pulled § 87(2)(b) from his arms and his torso towards the door. PO O'Neill and § 87(2)(b) tripped on a set of two or three steps, located immediately outside the door. PO O'Neill landed on § 87(2)(b)'s back halfway up the stairs.

The struggle continued outside, and other unidentified officers came to assist PO O'Neill. They attempted to put § 87(2)(b)'s arms behind his back. § 87(2)(b) kept his arms tense and tried to hold them under his chest. PO O'Neill, PO Kovalik and two other officers eventually pulled his arms behind his back. PO O'Neill handcuffed § 87(2)(b) and pulled him to the car by his arms, while § 87(2)(b) tried to pull away from PO O'Neill. No other force was used. Neither PO O'Neill nor any other officers kicked or punched § 87(2)(b) or pushed his face into the ground. PO O'Neill did not recall § 87(2)(b) being dragged to the car by any officer.

PO O'Neill noticed a female inside the house after the arrest was made. He did not recall where she was standing. PO O'Neill interacted with her but could not recall the nature of the interaction. He remembered that she was angry that § 87(2)(b) was under arrest. Neither PO O'Neill nor any other officer said the word "fuck" or used any other profanity during this incident. PO O'Neill's demeanor was calm.

PO O'Neill did not notice any injuries on § 87(2)(b) before the arrest. After the arrest, he noticed some blood on § 87(2)(b)'s face. He did not know where the injury came from but said they were struggling on a concrete surface. PO O'Neill did not recall whether § 87(2)(b) complained of any other injuries.

PO O'Neill brought § 87(2)(b) to the precinct stationhouse, where § 87(2)(b) continued to yell, curse, and be uncooperative. He asked to be taken to the hospital to be treated for the cuts to his face. PO Kovalik escorted § 87(2)(b) to the hospital. PO O'Neill did not accompany § 87(2)(b) to the hospital because he had to be treated for pain and discomfort in his right shoulder caused by the struggle with § 87(2)(b). He viewed photographs of § 87(2)(b) and stated that injuries to § 87(2)(b)'s knees could have been caused by the fall on the stairs. He stated that bruises on § 87(2)(b)'s arms could have resulted from the struggle to get § 87(2)(b)'s arms behind his back. He stated that a broken rib could have resulted from the struggle.

Subject Officer: PO MICHAEL KOVALIK

- *PO Kovalik, a 6' tall, 232 lb. white man with black hair and brown eyes, was § 87(2)(b) old at*

the time of the incident.

- *On the day of the incident, PO Kovalik, 60th Precinct, worked between 11:15 p.m. and 7:50 a.m. He was assigned to Patrol sectors A and B with PO Patrick O'Neill. He was dressed in uniform and worked in marked vehicle number 3916.*

Memo Book (encl. 12A-12C)

At 4:20 a.m., PO Kovalik responded to a burglary call at § 87(2)(b). At 4:49 a.m., one male was arrested by PO O'Neill. At § 87(2)(b) he arrived at § 87(2)(b) with the defendant. At 8:20 a.m., he arrived at the 60th Precinct. The defendant was discharged.

CCRB Statement

PO Kovalik was interviewed at the CCRB on January 8, 2014 (encl. 12D-12F). § 87(2)(g)

When PO Kovalik and PO O'Neill arrived on scene, they spoke with § 87(2)(b) and § 87(2)(b) who stated that they resided at the location. They explained that some of their property had been taken and some had been placed outside.

At some point, § 87(2)(b) came outside, and the three males said, "That's the gentleman who burglarized us." PO Kovalik did not know that § 87(2)(b) resided at the location at the time. He only found this out when § 87(2)(b) was later arrested.

§ 87(2)(b) stood on the inside of a fence separating his residence from the sidewalk. The officers stood outside. § 87(2)(b) yelled and cursed loudly at the three males. PO O'Neill requested his identification. He said, "No," and told the officers, "Fuck you. You can't do nothing. You can't come over here. I'll get a lawyer." PO O'Neill told him, "We have to talk to you. You're going to have to come outside." § 87(2)(b) replied, "No, I don't." PO O'Neill requested his identification several more times and told him to come outside so they could straighten out the situation. He was noncompliant. He repeatedly cursed, telling PO O'Neill, "Fuck you. I don't have to do anything."

§ 87(2)(b) turned away and went down a small flight of stairs leading into the apartment. PO Kovalik and PO O'Neill pursued him. PO O'Neill reached through the fence and opened the latch. As § 87(2)(b) fled, PO Kovalik and PO O'Neill yelled, "Halt! Police! Don't move!" He did not comply. When they reached the apartment, § 87(2)(b) attempted to shut the door. PO O'Neill reached it just in time and used his arm to push it open. PO Kovalik did not recall seeing PO O'Neill do anything that could have caused damage to the door. Neither PO Kovalik nor PO O'Neill ever made any commands for § 87(2)(b) to open the door.

PO O'Neill and PO Kovalik entered the apartment. PO O'Neill took hold of § 87(2)(b) from behind. He had one hand on his right arm and the other hand on his right shoulder. PO Kovalik stood behind PO O'Neill. PO O'Neill attempted to escort § 87(2)(b) up the stairs. § 87(2)(b) resisted by flailing his arms and attempting to break PO O'Neill's hold on him. PO O'Neill told him, "Police, don't move! We have to talk to you!" § 87(2)(b) kept saying, "You can't do this! Fuck you!" Eventually, § 87(2)(b) broke contact with PO O'Neill and elbowed him somewhere in his upper body. PO O'Neill and § 87(2)(b) both fell onto the stairs due to § 87(2)(b) elbowing PO O'Neill. PO Kovalik did not recall how they landed.

PO O'Neill eventually regained control of § 87(2)(b) and escorted him outside. PO Kovalik was unable to assist PO O'Neill because of how they were positioned on the stairs. § 87(2)(b) was handcuffed and placed under arrest for burglary. PO Kovalik did not recall if it was PO O'Neill or another officer who handcuffed § 87(2)(b). PO Kovalik was not involved in handcuffing § 87(2)(b). While § 87(2)(b) was being handcuffed, PO Kovalik went to deal with § 87(2)(b)'s wife, who was screaming at the officers from the front of her

apartment. PO Kovalik asked her for identification to prove she lives there. She was irate and kept saying, "What are you doing? You can't do this."

PO Kovalik did not see any injuries on § 87(2)(b) after his struggle with PO O'Neill. § 87(2)(b) § 87(2)(b) complained of injuries, but he was not specific. He said, "I got hurt. I got hurt." § 87(2)(b) § 87(2)(b) went to the hospital later for these injuries, but PO Kovalik did not recall what they were. He stated that § 87(2)(b) could have gotten scrapes and bruises from the struggle. He never learned that § 87(2)(b) had broken his rib, and nothing occurred during the incident that could have caused this injury. PO O'Neill was injured while § 87(2)(b) was resisting arrest, but PO Kovalik did not recall what the injury was.

PO Kovalik denied ever kicking § 87(2)(b) or seeing another officer do this. He never pushed § 87(2)(b)'s face into the stairs or saw another officer do this. Neither he nor PO O'Neill dragged § 87(2)(b) out of the house on his stomach. He did not participate in the apprehension of § 87(2)(b) and he never saw any other officers use force against him. He denied ever saying, "Fuck," or hearing another officer use that word. Neither he nor any other officer ever used profanity.

Witness Officer: PO ANTHONY AVOSSO

- PO Avosso, a 6' tall, 220 lb. black man with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.
- On the day of the incident, PO Avosso, 60th Precinct, worked between 11:15 p.m. and 7:50 a.m. He was assigned to Patrol sectors G and H and was partnered with PO Goicoechea. He was dressed in uniform and worked in marked vehicle number 3909.

Memo Book (encl. 14A-14C)

At 4:33 a.m., PO Avosso responded to a call for officers needing assistance for a burglary call at § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b). At § 87(2)(b), he took PO O'Neill to the § 87(2)(b) emergency room as per Sgt. Haitham Hussameldin.

CCRB Statement

PO Avosso was interviewed at the CCRB on February 12, 2014 (encl. 14D-14F).

At approximately 4:33 a.m. on October 1, 2013, PO Avosso and PO Goicoechea responded to a call for officers needing assistance at § 87(2)(b) § 87(2)(b) in Brooklyn. When PO Avosso and PO Goicoechea arrived on scene, PO O'Neill was on top of § 87(2)(b) attempting to handcuff him. They were at the top of a set of stairs leading down to the entrance of the apartment. The surface was concrete. § 87(2)(b) was positioned on his stomach, and PO O'Neill was on his back. PO O'Neill appeared to be struggling to get § 87(2)(b)'s hands behind his back. PO Avosso could not tell what was causing this difficulty. He did not know where § 87(2)(b)'s arms were positioned or if he was stiffening or flailing them. Eventually, PO O'Neill was able to pull § 87(2)(b)'s arms behind his back by grabbing them. He did not use any other force against § 87(2)(b). PO Avosso did not know what PO Kovalik was doing at the time. The only other officer he recalled being on scene was Sgt. Moyibi Thomas.

PO Avosso and PO Goicoechea did not take any police action while on scene. They stood on the street to the left of § 87(2)(b)'s residence. PO Avosso saw two or three other white males on scene. PO Avosso did not recall any other officers who were there, except for Sgt. Thomas, who arrived after § 87(2)(b) was handcuffed.

PO Avosso did not recall seeing any resistance from § 87(2)(b) as the officers brought him to the car. He did not see officers drag him on his stomach. He did not recall seeing any injuries on § 87(2)(b). He did not recall seeing anything that indicated § 87(2)(b) may

have been intoxicated, and he did not hear § 87(2)(b) say anything during the incident.

PO Avosso never saw any officers tear bamboo from the fence outside § 87(2)(b)'s apartment. He did not do this himself. He never saw any damage to § 87(2)(b)'s front door and did not see anything during the incident that could have caused this damage. He did not see any officers enter § 87(2)(b)'s residence, and he never learned that anyone had entered. He did not see officers push § 87(2)(b) to the ground, kick him, or push his face into the stairs. He had no physical contact with § 87(2)(b). He did not see anything that occurred during the incident which could have caused § 87(2)(b) to break his ribs. He never used the word "fuck" or heard any other officers do so. Neither he nor any other officer used profanity.

Witness Officer: PO AIDA ACEVEDO

- *PO Acevedo, a 5'5" tall, 160 lb. Hispanic woman with red/brown hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *PO Acevedo, 60th Precinct, worked between 11:15 p.m. on September 30, 2013 and 7:50 a.m. on October 1, 2013. She was assigned to Patrol sector C with PO Cotrina. She was dressed in uniform and worked in marked vehicle number 3872.*

Memo Book (encl. 15A-15B)

At 4:20 a.m., PO Acevedo backed 60th Precinct Sector A for a burglary in progress at § 87(2)(b) and § 87(2)(b).

CCRB Statement

PO Acevedo was interviewed at the CCRB on February 26, 2014 (encl. 15C-15D). § 87(2)(g).

When PO Acevedo arrived on scene, § 87(2)(b) was positioned on his stomach in front of the house in handcuffs. Neither she nor PO Cotrina took any police action. They did not discuss the incident with the officers who were already there. There were approximately four other officers on scene. PO Acevedo did not recall who they were, but she stated that PO O'Neill and PO Kovalik are typically assigned to Patrol Sector A at that time. PO Acevedo did not recall if there were any other civilians.

Nothing stood out about § 87(2)(b)'s behavior. PO Acevedo did not recall if he or the officers were saying anything while she was there. She did not recall if § 87(2)(b) was doing anything while he was on the ground. The officers just appeared to be standing there.

Witness Officer: PO CLUVER COTRINA

- *PO Cotrina, a 5'9" tall, 198 lb. Hispanic man with brown hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On the day of the incident, PO Cotrina, 60th Precinct, worked between 11:15 p.m. and 7:50 a.m. He was assigned to Patrol Sector C with PO Aida Acevedo. He was dressed in uniform and worked in marked vehicle number 3872.*

Memo Book (encl. 16A-16C)

At 4:20 a.m., PO Cotrina backed 60th Precinct Sector A for a burglary in progress at § 87(2)(b) and § 87(2)(b) in Brooklyn.

CCRB Statement

PO Cluver Cotrina was interviewed at the CCRB on March 13, 2014 (encl. 16D-16F). § 87(2)(g).

When PO Cotrina arrived on scene, PO O'Neill appeared to have § 87(2)(b) in custody. He could not tell if § 87(2)(b) was handcuffed or if PO O'Neill was attempting to place him in handcuffs. § 87(2)(b) was positioned either on top of a set of steps or on the ground near the steps. PO Cotrina could not tell if he was standing or on the ground. He seemed to be moving his shoulders back and forth while PO O'Neill stood behind him. PO O'Neill repeatedly told him, "Don't move." § 87(2)(b) was uncooperative and did not listen to PO O'Neill's commands.

The only force PO Cotrina saw PO O'Neill use was holding § 87(2)(b)'s arms in order to place the handcuffs on him. It took approximately 15-20 seconds to get § 87(2)(b) under control. PO Cotrina did not know if § 87(2)(b) and PO O'Neill ever went to the ground, but he stated that they "probably" or "maybe" did. PO Cotrina did not assist in handcuffing § 87(2)(b). PO Cotrina stood approximately one step inside the gate, which was open when he arrived. He was two feet away from where § 87(2)(b) was being handcuffed. He never had any interaction with § 87(2)(b). PO Cotrina did not know if PO Kovalik assisted in handcuffing § 87(2)(b). He did not recall any other officers on scene.

PO Cotrina was only on scene for two or three minutes. He never entered § 87(2)(b)'s apartment and never saw PO O'Neill or PO Kovalik enter. He did not remember any other officers on scene besides PO Acevedo, who stood farther away. There were a couple of civilians on scene, one of whom PO Cotrina learned had called 911.

Witness Officer: PO ARGIMIRO GOICOECHEA

- *PO Goicoechea, a 6'1" tall, 230 lb. Hispanic man with brown hair and brown eyes, was § 87(2)(b) years old at the time of the incident.*
- *On the day of the incident, PO Goicoechea, 60th Precinct, worked between 11:15 p.m. and 7:50 a.m. He was assigned to Patrol sectors G and H with PO Anthony Avosso. He was dressed in uniform and assigned to marked vehicle number 3909.*

Memo Book (encl. 17A-17C)

At 4:33 a.m., PO Goicoechea responded to § 87(2)(b) and § 87(2)(b) for a call by officers from Patrol Sector A for additional units.

CCRB Statement

PO Goicoechea was interviewed at the CCRB on March 13, 2014 (encl. 17D-17E). § 87(2)(g).

When PO Goicoechea arrived on scene, PO O'Neill and PO Kovalik were interacting with civilians on the sidewalk. PO Goicoechea believed these individuals had called 911. He did not recall what they said, and he did not speak with PO O'Neill or PO Kovalik about what was happening.

PO Goicoechea did not recall what happened after he arrived on scene. He recalled that an individual was arrested. He believed the arrest took place on the sidewalk. He did not recall officers ever entering the yard area. He did not recall who handcuffed the individual or whether he was compliant. PO Goicoechea did not recall if he was handcuffed while standing or if he was brought to the ground. He did not recall officers using force against him.

PO Goicoechea was on scene for approximately eight minutes. A sergeant, identified by the investigation as Sgt. Thomas, arrived to verify the arrest.

Witness Officer: SGT. MOYIBI THOMAS

- *Sgt. Thomas, a 5'10" tall, 210 lb. black man with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.*

- *On the day of the incident, Sgt. Thomas worked between 11:05 p.m. and 8:02 a.m. He was the 60th Precinct patrol supervisor. He was partnered with PO Keith Santiago. He was dressed in uniform and assigned to marked vehicle number 5642.*

Memo Book (encl. 13A-13B)

At 4:40 a.m., an arrest was made at § 87(2)(b) § 87(2)(b) for § 87(2)(b) by officers from 60th Precinct sector A.

Line-Of-Duty Injury Report (encl. 13C-13D)

Sgt. Thomas reported that, while attempting to arrest § 87(2)(b) PO O'Neill had to force entry into § 87(2)(b) § 87(2)(b) using his right shoulder. While attempting to place him into handcuffs, he resisted, causing further injury to PO O'Neill's right shoulder.

CCRB Statement

Sgt. Moyibi Thomas was interviewed at the CCRB on February 4, 2014 (encl. 13E-13F).

Sgt. Thomas and PO Santiago responded to § 87(2)(b) § 87(2)(b) at approximately 4:40 a.m. on October 1, 2013 to verify an arrest. When he arrived on scene, he observed PO O'Neill and PO Kovalik standing inside of a fence in front of the location with § 87(2)(b) He did not recall if § 87(2)(b) was handcuffed at the time or if there were other officers on scene.

Sgt. Thomas spoke with PO Kovalik and PO O'Neill, who explained the situation to him. Besides § 87(2)(b) there were two other civilians on scene. One was the individual whose property had been taken. This individual was identified by the investigation as § 87(2)(b) The other was a female, who was identified by the investigation as § 87(2)(b) Sgt. Thomas spoke to § 87(2)(b) at some point, but he did not recall the details of their conversation.

§ 87(2)(b) was acting disorderly when Sgt. Thomas arrived on scene. He raised his voice, rocked his body back and forth, and interrupted the officers while they attempted to speak with § 87(2)(b) § 87(2)(b) did not feel he should have been arrested. Sgt. Thomas did not recall any specific statements § 87(2)(b) made.

Sgt. Thomas did not recall if he observed injuries on § 87(2)(b) or the officers. Sgt. Thomas did not recall ever seeing bamboo pulled back from the fence. He never saw any officers pull any bamboo back. He did not break any locks on § 87(2)(b)'s door or see any other officers do this. He did not enter § 87(2)(b)'s home or see any other officers enter. He denied pushing § 87(2)(b) on the floor, kicking him, pushing his face into the stairs, or dragging him on his stomach. He did not see any other officers do this.

Witness Officer: PO KEITH SANTIAGO

- *PO Santiago, a 5'8" tall, 165 lb. Hispanic man with brown hair and brown eyes, was § 87(2)(b) years old at the time of the incident.*
- *On the day of the incident, PO Santiago worked between 11:15 p.m. and 7:50 a.m. He was the operator for Sgt. Moyibi Thomas. He was dressed in uniform and worked in marked vehicle number 5642.*

Memo Book (encl. 18A-18B)

PO Santiago's memo book noted only that he responded to the scene at that the perpetrator was in the car by the time he arrived.

CCRB Statement

PO Santiago was interviewed at the CCRB on March 14, 2014 (encl. 18C-18D).

PO Santiago responded to the scene in a separate vehicle from Sgt. Thomas. By the time he arrived, § 87(2)(b) was already inside the police vehicle.

Medical Records

Pre-Hospital Care Report (encl. 25A-25B)

§ 87(2)(b) was transported from the 60th Precinct stationhouse to § 87(2)(b) by EMTs § 87(2)(b) and § 87(2)(b) on § 87(2)(b). His vitals were stable, and he was not in distress. He was accompanied by PO Kovalik.

§ 87(2)(b) (encl. 26A-27QQ)

§ 87(2)(b) was treated at § 87(2)(b) twice on § 87(2)(b). The first time, he was treated by § 87(2)(b). He had noticeable shaking to his upper extremities. He also had lacerations on his forehead and mild abrasions on his knees. He was diagnosed with generalized convulsive epilepsy, without mention of intractable epilepsy. He was also diagnosed with an unspecified head injury. During § 87(2)(b)'s second visit he was treated by § 87(2)(b), who noted that he appeared shaky. He was again diagnosed with generalized convulsive epilepsy, without mention of intractable epilepsy.

§ 87(2)(b) (encl. 28A-28QQ)

§ 87(2)(b) was treated at § 87(2)(b) on § 87(2)(b) by § 87(2)(b). He was found to have multiple contusions and abrasions on his right arm and both of his knees. He was also diagnosed with an incomplete fracture on the right fifth posterior rib.

It was noted in § 87(2)(b)'s medical records that hospital personnel called 911, who stated they would send an officer to speak with § 87(2)(b) about his injuries. § 87(2)(b) changed his story after he was interviewed and stated, "Police hit me." § 87(2)(b) was referred to the 60th Precinct, where the incident occurred.

NYPD Documents

Event # § 87(2)(b) & Event # § 87(2)(b) (encl. 19A-19L)

A call was dispatched for a burglary in progress at approximately 4:09 a.m. on October 1, 2013. Officers from 60th Precinct Patrol Sectors A and G responded to the scene, as well as a sergeant from the 60th Precinct. Sector A officers arrived on scene at 4:22 a.m. Officers from Sector G arrived at 4:27 a.m. The radio run did not indicate any other officers who responded to the scene.

Arrest Photograph (encl. 19M)

There are no visible injuries on § 87(2)(b) in his arrest photograph.

Command Log (encl. 19T-19CC)

§ 87(2)(b) was arrested by PO O'Neill for grand larceny. He was disorderly and intoxicated. He was removed to § 87(2)(b) at § 87(2)(b). He returned and was again removed to § 87(2)(b) at § 87(2)(b).

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 23, 2014, more than three weeks after the 90-day filing deadline, with regard to the incident.

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [REDACTED]
- [REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3A).
- This is the first CCRB complaint in which § 87(2)(b) is a victim (encl. 3B).

Subject Officers CCRB History

- PO O'Neill has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 2A).
- PO Kovalik has been a member of the service for four years and there are no substantiated CCRB allegations against him. (encl. 2B).

Conclusion

Identification of Subject Officers

- PO O'Neill was § 87(2)(b)'s arresting officer. He had a detailed memo book entry pertaining to the incident, and he confirmed his involvement during his CCRB interview. His pedigree information closely matched the descriptions provided by § 87(2)(b) and § 87(2)(b) § 87(2)(g).
- PO O'Neill identified PO Kovalik as his partner. PO Kovalik had a memo book entry pertaining to the incident, and he confirmed his involvement during his CCRB interview. § 87(2)(g).
- § 87(2)(b) and § 87(2)(b) were unable to describe any additional officers who used force against § 87(2)(b). No officers besides PO O'Neill admitted to participating in § 87(2)(b)'s apprehension. § 87(2)(g).

Allegations Not Pleaded

- [REDACTED] § 87(2)(g)
- [REDACTED]

§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Patrick O’Neill entered and searched § 87(2)(b) in Brooklyn.

Allegation B – Abuse of Authority: PO Michael Kovalik entered and searched § 87(2)(b) in Brooklyn.

Allegation C – Abuse of Authority: PO Patrick O’Neill damaged § 87(2)(b) s and § 87(2)(b) s property.

It is undisputed that police officers were called to the scene in response to a burglary and that PO O’Neill and PO Kovalik entered the home of § 87(2)(b) in order to arrest him.

§ 87(2)(b) stated that PO O’Neill stood outside of the fence surrounding § 87(2)(b) s yard. § 87(2)(b) stood inside the gate. He attempted to explain the situation and told PO O’Neill to remove § 87(2)(b) from his property. PO O’Neill asked him at least once to open the gate. § 87(2)(b) told them he would not open it because it was his property. At some point, § 87(2)(b) moved to the doorway of his apartment, which is located approximately 10 to 15 feet from the front gate. PO O’Neill then began tearing off pieces of the bamboo fence to enter the yard. § 87(2)(b) closed the door to his apartment. PO O’Neill then forced his way through the door, breaking the lock. He and other officers, one of whom was identified by the investigation as PO Kovalik, entered his apartment.

§ 87(2)(b) corroborated § 87(2)(b) s statement, except that she said she and § 87(2)(b) entered the apartment, closing and locking the door, when PO O’Neill began tearing off the bamboo on the fence.

PO O’Neill stated that when he arrived on scene, he observed § 87(2)(b) and § 87(2)(b) § 87(2)(b) explained that he was renting a room and was told to move all of his property out two weeks prior to the end of their rental agreement to prepare for the arrival of a new tenant. When § 87(2)(b) came home, he found all of his property outside of the apartment, and he was missing various items. He had also received threatening text messages in Russian from § 87(2)(b) the landlord, stating that he broke several items. At this time, § 87(2)(b) came out of the house, exited the fence, which PO O’Neill described as being a three-foot high chain-linked fence with a six foot bamboo extension, and stood on the sidewalk. One of the males identified him as the landlord. When PO O’Neill approached § 87(2)(b) and attempted to get information from him, he went back into the gate and closed it. PO O’Neill told him to stop and come back numerous times. § 87(2)(b) ignored his orders and remained inside the gate. PO O’Neill broke the bamboo on the fence to access the gate’s latch. He walked through the gate and approached § 87(2)(b) § 87(2)(b) ran back into the apartment, and PO O’Neill ordered him to stop. § 87(2)(b) entered the apartment and closed the door behind him. PO O’Neill attempted to open the door, but it was locked. PO O’Neill then broke the lock and forced the door open with his shoulder in order to arrest § 87(2)(b) § 87(2)(b) Although he later stated that he did not observe any physical damage to § 87(2)(b) s door, PO O’Neill acknowledged that his action of shoving the door open with his arm could have caused damage.

PO Kovalik stated that when he and PO O’Neill spoke to the three males, they said that some of their property had been taken and some had been placed outside. § 87(2)(b) came outside his house and stood on the inside of the fence that separated his residence from the sidewalk. PO O’Neill requested his identification, but § 87(2)(b) refused to give it to him. PO O’Neill then

told him, “We have to talk to you. You’re going to have to come outside.” § 87(2)(b) replied, “No, I don’t.” PO O’Neill requested his identification several more times and told him to come outside so they could straighten out the situation. He was noncompliant and began running down a small flight of stairs leading to his apartment. PO Kovalik and PO O’Neill pursued him. PO O’Neill reached through the fence and opened the latch on the door. As § 87(2)(b) fled, PO Kovalik and PO O’Neill told him to stop, but he was noncompliant. When they reached the apartment, § 87(2)(b) attempted to shut the door. PO O’Neill reached it just in time to open it. He used his arm to push it open.

None of the other officers witnessed the entry into § 87(2)(b) § 87(2)(b) or observed damage to the front door.

§ 87(2)(g)

The photographs provided by § 87(2)(b) during her CCRB interview confirm PO O’Neill’s description of the fence. They also show that the lock below the doorknob, as well as the wood surrounding the lock, appear to bow out from the side of the apartment door. § 87(2)(b)

(g)

The Fourth Amendment to the United States Constitution protects the integrity of an individual’s house and the private area surrounding the house, known as its “curtilage.” U.S. v. Dunn, 480 U.S. 194 (1987) (encl. 1A-1N). The Supreme Court has identified four factors that help resolve whether an area outside the house is within its curtilage: its proximity to the house, whether it is within an enclosure that surrounds the house, the nature of the uses to which it is put, and the steps that the resident takes to protect the area from observation. U.S. v. Dunn.

Absent consent, warrantless entries into private homes are unconstitutional unless they are based on probable cause and exigent circumstances. People v. McBride, 14 N.Y.3d 440, 446 (2010) (encl. 1O-1U). To determine whether exigent circumstances are present, courts consider the following criteria: (1) the gravity or violent nature of the suspected offense; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. People v. McBride.

Officers may damage property only when it is reasonably necessary to do so. Onderdonk v. New York, 170 Misc. 2d 155 (1996, Court of Claims) (encl. 1V-1Z).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

_____.

■■■■■■■■■■

It is undisputed that when PO O'Neill and PO Kovalik entered § 87(2)(b)'s apartment, a struggle ensued.

During his CCRB statement, § 87(2)(b) stated that when PO O'Neill, PO Kovalik, and other unidentified officers entered his apartment, one of them pushed him on the floor. He was positioned on his hands and knees, and an officer attempted to push his face into the stairs. He then alleged that he was kicked in his lower back, his stomach, his buttocks, and the left side of his neck an unknown number of times, causing him to lose consciousness for a few seconds. § 87(2)(b) held his hands on the ground the whole time and did not move them around. He was eventually handcuffed inside the apartment, dragged out on his stomach, and placed in a police vehicle. He could not specify which officer took these actions.

He claimed to have two broken ribs from the incident. He was also bleeding from his head, had bruises and lumps on his left arm, bruises on his upper right arms, scrapes on his knees, and blood in his urine. § 87(2)(b) did not mention any force used by the officers while he was at § 87(2)(b). He claimed to have received the scrapes on his knees when they rubbed against the floor during his arrest. At § 87(2)(b) he initially stated that he was punched by someone two days before who had stolen his wallet. He later stated that police officers struck him with their fists all over his body. He also stated that his injuries occurred when he was kicked, pushed, and thrown down. It was noted by hospital personnel that he changed his story after a police officer arrived to the hospital to interview him.

During her CCRB interview, § 87(2)(b) stated that § 87(2)(b) was kicked at least five or six times on the right and left sides of his chest. She stated that PO O'Neill was the officer that primarily used force against § 87(2)(b) while other unidentified officers held him, but that the other officers may have also kicked him. During her IAB statement she stated that § 87(2)(b) was "hit" in his stomach and chest by officers. In her telephone statement to the CCRB, she instead stated that the officers hit him on the back with their fists. § 87(2)(b) did not resist officers' attempts to handcuff him. When § 87(2)(b) was placed in the police vehicle, his face was bleeding.

§ 87(2)(b) stated that PO O'Neill pulled § 87(2)(b) out of his house by his arm.

While he attempted to handcuff him, they wrestled on the ground. § 87(2)(b) could not describe how they wrestled. § 87(2)(b) stated that § 87(2)(b) resisted the officers' attempts to handcuff him by pushing one of them away. He did not see any officers punch § 87(2)(b) or "beat" him. He believed § 87(2)(b) was handcuffed on the ground. § 87(2)(b) also stated that § 87(2)(b) resisted and wrestled with the officers. He confirmed that § 87(2)(b) pushed PO O'Neill.

PO O'Neill stated that when he entered § 87(2)(b) § 87(2)(b) he told § 87(2)(b) twice to turn around put his hands behind his back. § 87(2)(b) was noncompliant. PO O'Neill reached for § 87(2)(b)'s left arm, and § 87(2)(b) pulled his arm back and moved his shoulders back and forth. PO O'Neill attempted to handcuff him, but § 87(2)(b) flailed his arms and held them in front of his body. He also attempted to move away from PO § 87(2)(b). PO O'Neill pulled § 87(2)(b) from his arms and his torso towards the door. PO O'Neill and § 87(2)(b) § 87(2)(b) tripped on a set of two or three steps, located immediately outside the door. PO O'Neill landed on § 87(2)(b)'s back halfway up the stairs. The struggle continued outside, and other officers came to assist PO O'Neill. They attempted to put § 87(2)(b)'s arms behind his back. § 87(2)(b) kept his arms tense and tried to hold them under his chest. PO O'Neill, PO Kovalik and two other officers eventually pulled his arms behind his back. PO O'Neill handcuffed § 87(2)(b) and pulled him to the car by his arms, while § 87(2)(b) tried to pull away. No other force was used. Neither PO O'Neill nor any other officers kicked § 87(2)(b) punched him, or pushed his face into the ground. PO O'Neill did not recall § 87(2)(b) being dragged to the car by any officer.

PO Kovalik stated that when he and PO O'Neill entered the apartment, PO O'Neill took hold of § 87(2)(b) from behind. He had one hand on his right arm and the other hand on his right shoulder. PO Kovalik stood behind PO O'Neill. PO O'Neill attempted to escort § 87(2)(b) up the stairs. § 87(2)(b) resisted by flailing his arms and attempting to break PO O'Neill's hold on him.

Eventually, § 87(2)(b) broke contact with PO O'Neill and elbowed him somewhere in his upper body. PO O'Neill and § 87(2)(b) both fell onto the stairs due to § 87(2)(b) elbowing PO O'Neill. PO Kovalik did not recall how they landed. PO O'Neill eventually regained control of § 87(2)(b) and escorted him outside. He was handcuffed and placed under arrest for burglary. PO Kovalik denied ever kicking § 87(2)(b) or seeing another officer do this. He never pushed § 87(2)(b)'s face into the stairs or saw another officer do this. Neither he nor PO O'Neill dragged § 87(2)(b) out of the house on his stomach.

None of the other officers witnessed any force used in the apprehension of § 87(2)(b).

According to § 87(2)(b)'s medical records, he had lacerations on his forehead, multiple contusions and abrasions on his right arm and both of his knees, and an incomplete fracture on his right fifth posterior rib.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide section 203-11 states that all officers at the scene of a police incident must use the minimum amount of force necessary (encl. 1AA-1BB).

§ 87(2)(g)

Allegation E – Physical Force: PO Patrick O’Neill used physical force against § 87(2)(b)

As noted above, § 87(2)(b) and § 87(2)(b) both stated that additional officers, besides PO O’Neill, used force against § 87(2)(b). They could not describe these officers and could not identify the specific force that they used.

PO O’Neill could not identify any additional officers who assisted him in handcuffing § 87(2)(b) besides PO Kovalik. PO Kovalik denied participating in § 87(2)(b)’s apprehension. None of the other officers admitted to using any force against him or to having any involvement in his apprehension.

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date